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PATENT

Scroggie's cited teachings concern a system for distributing purchasing incentives over the Internet. While physical objects are scanned at a grocery checkout by a scanner, the resulting data is used to provide electronic coupon-like purchase incentives from the store's computer to the user's computer (col. 11, lines 41-47). The user can then employ these purchase incentives in connection with a subsequent purchase (col. 12, lines 2-6).

The Action states that Scroggie teaches use of the scan data "to present a customized selection of items in an on-line shopping environment" (as required by claims 1 and 2. However, while the Action cited column/line of Scroggie for other cited features, no such citation was provided for "using said recalled list to present a customized selection of items in an on-line shopping environment." No such teaching of Scroggie can be located. Accordingly, applicants respectfully submit that a *prima facie* case has not been established as to claim 1. As such, applicants do not further address other aspects of this rejection of claims 1, or rejections of claims 2 and 10-11 dependent thereon.

Regarding claim 7, the Action relies on Official Notice in connection with the limitation, "recalling said logged database record [logged in an on-line shopping environment] in a bricks and mortar store and using the logged information in connection with bricks and mortar shopping by said user." In particular, the Action notes that such logged information "can be readily accessed and presented in any number of environments including a brick and mortar shopping environment."

Applicants respectfully submit that the *possibility* of such use of profile data (i.e., "...*can* be readily accessed...") is not evidence that is *has* been so used in the prior art. Actual use of such profile data is required as a predicate for Official Notice of such feature.

Again, applicants are aware of no art in which preference data *logged in an on-line shopping environment is thereafter recalled in a bricks and mortar store and used in connection with bricks and mortar shopping by the shopper*. If the reliance on Official Notice is renewed, the Examiner is requested to provide art illustrating such teaching.

Again, in view of this shortcoming of the rejection, other points that might be made in connection with this rejection of claim 7 are reserved.

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Claim 3 defines a method that includes - after a user has selected desired products from a user-specific list of products - querying the user as to possible purchase of an item *not selected but included* in the user-specific list. As admitted by the Action, Kenney does not teach or suggest such an arrangement. However, the Action relies on Official Notice for such feature.

Again, a predicate for reliance on Official Notice is that the noticed teaching must be a "fact" outside of the record which is capable of "instant and unquestionable demonstration" (MPEP 2144.03). Applicants submit that the feature of claim 3 for which Official Notice is taken is not such a fact. Again, applicants request that the Examiner cite a reference in support of such Official Notice if the rejection is renewed.

Again, in view of this shortcoming, other points that might be made in connection with this rejection of claim 3, and claims 4-6 and 12-14 dependent thereon, are reserved.

The cover sheet of the Action says it is non-final. However, the body of the rejection - on page 9, says the rejection is final.

Applicants submit that a final rejection is improper, as claims 1-9 are *unamended*, yet new grounds of rejection have been made. MPEP 706.07(a) notes:

Second or any subsequent actions on the merits shall be final, *except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement...*

In view of the foregoing, applicants solicit a notice of allowance of claims 1-13 (or a further rejection on the merits, including art establishing facts for which Official Notice has been asserted).

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Respectfully submitted,

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